AMENDMENTS TO THE DRAWINGS

In accordance with U.S. Patent and Trademark Office practice, proposed drawing changes as REPLACEMENT SHEETS are attached, wherein Applicant proposes to amend the drawings in the above-identified application as follows:

Please amend Figure 1 by replacing "Invitaion" found within block 20 with -- Invitation --.

Please amend Figure 3 by replacing "Invitaion" found within block 20 with -- Invitation --.

Please amend Figure 5 by replacing "Invitaion" found within block 20 with -- Invitation --.

No new matter has been added. Approval is earnestly requested.

REMARKS

This is in full and timely response to the non-final Office Action mailed on January 13, 2006. Reexamination in light of the following remarks is respectfully requested.

Claims 25-39 are currently pending in this application, with claims 25, 36 and 37 being independent.

No new matter has been added.

Prematureness

Applicant, seeking review of the *prematureness* of the final rejection within the Final Office action, respectfully requests reconsideration of the finality of the Office action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

Double patenting rejection

Paragraph 2 of the Office Action indicates a rejection of claims 25-39 under the judicially created doctrine of obviousness double patenting as allegedly being unpatentable over claims 1-2, 5 and 7-12 of U.S. Patent No. 6,763,334.

As noted within paragraph 2 of the Office Action, a Terminal Disclaimer may be used to overcome a rejection of the claims under the judicially created doctrine of obviousness double patenting.

In this regard, please hold in abeyance the requirement for a Terminal Disclaimer until all other rejections under prior art have been addressed, and that the Examiner reevaluate the requirement for a Terminal Disclaimer at that time.

Rejection under 35 U.S.C. §103

Paragraph 4 of the Office Action includes a rejection of claims 25-39 under 35 U.S.C. §103 as allegedly being obvious over U.S. Patent No. 5,848,396 to Gerace in view of U.S. Patent No. 5,949,419 to Domine et al. (Domine).

This rejection is traversed at least for the following reasons.

Gerace - Gerace may arguably relate to a computer network method and apparatus for providing targeting of appropriate audience based on psychographic or behavioral profiles of end users.

Gerace arguably teaches a software program 31 operated on and connected through a server 27 to the Internet for communication among the various networks 19 and/or processors 11, 13, 15, 17 and other end users connected through respective servers 25 (Gerace at column 3, lines 57-62).

Quite possibly, Figure 2 of Gerace may provide that the program 31 in its most general form has an agate data assembly 71, a user profiling member 73, an advertisement module 75 and a program controller 79.

Column 5, lines 26-39 of Gerace arguably provides that:

> In addition, for each advertisement, advertisement module 75 (and/or user profiling member 73) records (a) the number of times and/or number of users to whom the advertisement has been displayed, (b) the number of times/users who have requested more information (via a click of a mouse on a corresponding menu selection) regarding the advertisement, and when possible (c) the number of purchases obtained through program 31's display of the advertisement. As such, advertisement module 75 holds performance data for each advertisement, and hence enables program controller 79 to provide performance reports to sponsors who log on to program 31. Various regression techniques and the like are used in the performance reports in a manner consistent with the state of the art.

Column 15, lines 11-24 of Gerace arguably teaches an equation that may include:

(#hits purchased / #hits achieved).

Gerace arguably teaches that the pricing may be dependent on the *number of times the ad is **viewed** by users* (i.e., a "***hit***") (Gerace at column 12, lines 11-12).

Column 15, lines 11-24 of Gerace arguably teaches an equation that may include:

(#clickthroughs purchased / # clickthroughs achieved).

Gerace arguably teaches that the pricing may be dependent on the *number of times a **user selects** to view more information* from the ad (i.e., a "***click through***") (Gerace at column 12, lines 12-14).

The Office Action contends that a Home Page of Gerace is readable upon an entrance page of the claimed invention (Office Action at page 3).

The Office Action further contends that Financial Pages, etc. of Gerace are readable upon an action page of the claimed invention (Office Action at page 3).

However, the claimed invention found in the present application provides for:

- *a page access number* that is the number of the accesses to the entrance page of said web site during a predetermined period of time,
- *an action access number* that is the number of accesses to said action page, and
- *a result number* that is the number of actions made in response to an action object for necessitating processing at said action process module.

The claimed invention additionally provide that a *proceeder rate*, which is the ratio of the action access number to said page access number, and a *completer rate*, which is the ratio of the result number to said page access number.

In this regard, the Office Action ***admits*** that the claimed *page access number* and the claimed *proceeder rate* are ***absent*** from within Gerace (Office Action at page 5).

Thus, Gerace fails to disclose, teach, or suggest a *proceeder rate*, which is the ratio of the action access number to said page access number, and a *completer rate*, which is the ratio of the result number to said page access number.

Domine - The Office Action refers to Domine for the features admittedly deficient from within Gerace. Domine arguably teaches a web browser detection and default home page modification device.

The Office Action relies upon column 3, lines 62 to column 4, line 12 of Domine as support for the motivation to combine the teachings of Domine with those of Gerace (Office Action at page 4). That passage within Domine merely provides that:

> First, increased traffic at a Web Site is directly related to that Site's ability to charge increased amounts for electronic advertising. That is, companies placing advertisements for their products and/or services want to receive the maximum amount of exposure. The HOMER device maximizes potential advertiser exposure at a particular Web Site by causing individuals to start each and every browsing session at that Site. HOMER--together with further individual customization of the HOMER-adopted Home Page--creates a "captive target market" for advertisers.

However, column 3, lines 62 to column 4, line 12 of Domine fails to account for the features admittedly absent from within Gerace of claimed *page access number* and the claimed *proceeder rate*.

Next, the Office Action contends, without providing any evidentiary support, that "because proceeder number is a measure of the rate at which web site traffic is converted to ad viewers, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to also add reporting of proceeder number to the teachings of Gerace" (Office Action at page 4).

In response, the teachings, suggestions or incentives supporting the obviousness-type rejection must be clear and particular. Broad conclusory statements, standing alone, are not evidence. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). As a result, this contention is merely a personal conclusion that is unsupported by any objective evidence.

In addition, "it is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. The references themselves must provide some teaching whereby the applicant's combination would have been obvious" (citations omitted). *In re Gorman*, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). See also *In re Dembiczak*, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999) (rejection based upon hindsight is reversed).

This assertion amounts to nothing more than an "obvious-to-try" situation. Specifically, "an 'obvious-to-try' situation exists when a general disclosure may pique the scientist's curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued." *In re Eli Lilly & Co.*, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990). Moreover, "an invention is 'obvious-to-try' where the prior art gives either no indication of which parameters are critical or no direction as to which of many possible choices is likely to be successful." *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843, 1845 (Fed. Cir. 1989).

Here, the cited prior art does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued. "Obvious to try" is not the standard under §103. *In re O'Farrell*, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988).

The Office Action has also *failed* to show that the claimed *page access number* and the claimed *proceeder rate*, which is admittedly ***absent*** from within Gerace is found within Domine. Therefore, even when Gerace is combined with the Domine, the proceeder rate and the completer rate cannot be determined from the combination thereof.

As shown hereinabove, Gerace and Domine, either individually or as a whole, fail to disclose, teach, or suggest the all features of the claimed invention.

Withdrawal of this rejection an allowance of the claims is respectfully requested.

Note on interpretation of claim terms

The Office Action contends that the instant application contains no clear definition for any terms (Office Action at page 4).

In response, *no rejection* of the claims under 35 U.S.C. §112, second paragraph has been made within the Final Office Action. If a rejection under 35 U.S.C. §112, second paragraph is intended, practice and procedures within the U.S. Patent and Trademark Office dictate this rejection *should occur within the context of a properly stated Office Action*. M.P.E.P. §707.07.

Moreover, it is respectfully submitted that the claim language found within the claims is facially clear. In this regard, it is believe that that this note is merely attempts to recast the features of the claimed invention without providing any objective line of reasoning to show that a lack of clarity is, indeed, found within the claim language. Such reconstruction is without authority under Title 35 U.S.C., Title 37 C.F.R., the M.P.E.P. and relevant case law; such reconstruction is therefore deemed improper and inappropriate.

The following description is provided for illustrative purposes and is not intended to limit the scope of the invention. Specifically:

The paragraph in the specification as originally filed beginning at page 4, line 3, provides that:

> The index CGI is also linked to an index log file which stores index data with regard to the user requesting access to the entrance page.

The paragraph in the specification as originally filed beginning at page 4, line 16, provides that:

> The action CGI is also linked to an action log file which stores action access data with regard to the user requesting for access to the action page.

The paragraph in the specification as originally filed beginning at page 4, line 29, provides that:

> The result CGI is also linked to a result log file which stores action process data with regard to the user requesting the processing at the action process module.

The paragraph in the specification as originally filed beginning at page 7, line 16, provides that:

> FIGS. 1 and 2 illustrate a system of arranging the delivery of advertisements over a network in accordance with a preferred embodiment of the present invention. The system is managed by an agent having an agent's server 10 for arranging the delivery of the advertisements intended by advertisers over the network such as the Internet to media owners, i.e., potential affiliates having their own network medium such as a mailing magazine, an opt-in mailing service, a web-site or any other network media affording ad spaces 201, i.e., spaces for sale for advertisement such as an add expression and an ad banner. The advertiser is defined to have its own web site where the network users can access for obtaining information about services and products of the advertiser. The server 10 communicates over the network with the advertisers as well as with the affiliates so that the affiliate can determine whether or not to place the intended advertisement on its network media.

The paragraph in the specification as originally filed beginning at page 11, line 1, provides that:

> The offer page 40 and the information page 50 provide sufficient information so that the affiliate can decide, in consideration of the information together with the user's demographics of the affiliate's medium, which ad space 201 to place the

advertisement. When the affiliate accepts the conditions proposed by the advertiser through the offer page 40, the affiliate is only required to complete the agreement section 51. The reply from the offer page 40 is then sent back to arrangement module 14 of the agent's server 10, which responds to establish an advertisement contract between the affiliate and the advertiser, and delivers a confirmation notice of the contract to the advertiser and the affiliate by way of e-mail. The confirmation notice includes an actual period between starting and ending the placement of the advertisement on the ad space 201 and a media indicator. The media indicator indicates the type of network media, such as the mailing magazine, the opt-in mailing service, the web-site and the like affording the ad spaces. For example, the mailing magazine is designated by a letter of `M`, the opt-in mailing service is by a letter of `O`, and the web-site is by a letter of `W`. These letters are assigned to the corresponding media and acknowledged by the agent's server when the affiliates makes registration to the system.

The paragraph in the specification as originally filed beginning at page 12, line 19, provides that:

Then, the arrangement module 14 allocates the ad space 201 to defined pages of the advertiser's web site through the agent's server 10. The defined pages are an entrance page 101 which is initially visited by the user from the ad space 201 and an action page 102 which induces the user's response selected by the advertiser to be paid for.

At least for the reasons provided hereinabove, the claims are believed to be facially clear and are supported by the specification as originally filed. The claim language is unambiguous.

Conclusion

For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance. Accordingly, favorable

reexamination and reconsideration of the application in light of the amendments and remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Dated: May 25, 2006

Respectfully submitted,

By_____

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REPLACEMENT SHEETS